

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795		Hearing Date/Agenda Number P.C. 11/19/03 Item: 4.f.	
STAFF REPORT		File Number CP 03-041	
		Application Type Conditional Use Permit	
		Council District 7	
		Planning Area South	
		Assessor's Parcel Number(s) 477-48-018	
PROJECT DESCRIPTION		Completed by: Jeff Roche	
Location: Southeast corner of Story Road and Clemence Avenue			
Gross Acreage: 0.26		Net Acreage: 0.26	
Existing Zoning: CP – Commercial Pedestrian		Existing Use: Retail and Restaurant	
Proposed Zoning: No Change		Proposed Use: Addition of late night hours for an existing restaurant (from 12 midnight to 3:00 am from Friday to Sunday).	
GENERAL PLAN		Completed by: JR	
Land Use/Transportation Diagram Designation: Neighborhood/Community Commercial		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> See Analysis and Recommendations	
SURROUNDING LAND USES AND ZONING		Completed by: JR	
North: Industrial Park, Commercial		IP-Industrial Park, CN-Commercial Neighborhood	
East: Commercial		CP-Commercial Pedestrian	
South: Commercial, Attached Residential		CP-Commercial Pedestrian, R-M-Multiple Residence	
West: Commercial, Attached Residential		CN-Commercial Neighborhood, R-M-Multiple Residence	
ENVIRONMENTAL STATUS		Completed by: JR	
<input type="checkbox"/> Environmental Impact Report <input type="checkbox"/> Negative Declaration		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete	
FILE HISTORY		Completed by: JR	
Annexation Title: McKinley No.4		Date: April 17, 1959	
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION			
<input type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input checked="" type="checkbox"/> Denial		Date: _____ Approved by: _____ <input type="checkbox"/> Action <input checked="" type="checkbox"/> Recommendation	
OWNER EOL Properties VII 1020 Story Road San José, CA 95122-2676		DEVELOPER Cesar Galindo 1268 Bellingham Drive San José, CA 95121	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Jeff Roche

Department of Public Works

No comments.

Other Departments and Agencies

See attached memorandum from the Police Department (Vice Section).

GENERAL CORRESPONDENCE

See attached letters from Jason Sowards (Coates & Sowards, Inc.), the Tully/Senter SNI Group and information from Cesar Galindo (project developer), including a petition from restaurant patrons (~960) in support of the request.

ANALYSIS AND RECOMMENDATIONS

BACKGROUNDProject Description

The project developer has proposed a Conditional Use Permit on the subject 0.26-acre parcel, to allow the operation of an existing restaurant from 12 midnight until 3:00 a.m. on Fridays, Saturdays and Sundays within an existing shopping center. The restaurant is a tenant in an existing pad building located at the corner of Story Road and Clemence Avenue. The Zoning Code requires a Conditional Use Permit for operation of a commercial use between 12:00 midnight and 6:00 a.m. Currently there is no off-sale of alcohol or entertainment at the restaurant, and the current proposal does not include these uses. The applicant has proposed to hire security officers for the late night, extended hours of operation.

Uses on the Existing Site and Surrounding Properties

The shopping center within which the subject restaurant is located contains an existing supermarket and other neighborhood serving commercial uses which include an existing supermarket, convenience market and liquor store which operate on a 24-hour basis. Staff has found no record of any Conditional Use Permits for 24-hour uses at this location. Due to the age of the shopping center (constructed between 1968 and 1975), these late-night uses may have been initiated prior to the requirement for a Conditional Use Permit and may be legal non-conforming.

Uses surrounding the shopping center site include commercial to the west, industrial park and commercial to the north, commercial to the east, commercial and attached residential to the south, and attached residential to the southwest.

PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss the project with interested members of the public. Copies of all correspondence received on the project is attached to this report. The applicant presented the proposal to the Tully/Senter Strong Neighborhood Initiative Neighborhood Action Committee (NAC) which indicated support of the extended hours of operation (see attached communication from Martin Renteria, Chair of the NAC).

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from further environmental review pursuant to the California Environmental Quality Act since the proposal involves a minor alteration of an existing facility or use, and the project proposes no additional square footage or increase in seating capacity.

GENERAL PLAN CONFORMANCE

The project site is designated Neighborhood/Community Commercial on the City's General Plan Land Use/Transportation Diagram. The proposed use is consistent with this designation.

ANALYSIS

The primary issue associated with this project is conformance with *City Council Policy No. 6-27; Evaluation of 24-Hour Uses*.

City Council Policy No. 6-27 – Evaluation of 24-Hour Uses

The *Council Policy for Evaluation of 24-Hour Use* (see attached) is intended to assure compatibility of late night and early morning uses with surrounding land uses. The Policy provides criteria for evaluating 24-hour uses and measures to reduce their potential negative impacts on neighboring land uses. In regard to restaurants, the Policy states that sit-down restaurants, such as the subject use, generally do not exhibit the same types of problems, including litter and loitering, as do take-out restaurants. The Policy suggests that restaurants be reviewed on a case-by-case basis to determine if they are appropriate. Following is a review of the key Policy criteria relevant to the subject proposal, use separation and police issues.

Use Separation

The subject use is located on a 4.5-acre commercial site bounded by Story Road to the north, McLaughlin Avenue to the east and Clemence Avenue to the west. Clemence is a primarily residential street south of the project site, and residential uses at the corner of Owsley and Clemence Avenues are the closest residential uses to the subject restaurant. Residential uses are also located immediately behind the shopping center.

The Policy states that 24-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding areas. The separation of uses is identified as an important guideline to minimize potential impacts on residential or other sensitive neighboring uses. The Policy indicates that after-midnight uses should generally not be located within 300 feet of residential development as

measured from the “designated parking area” (the parking located closest to the entrance of the use). The designated parking area for the subject restaurant is located approximately 150 feet from residential uses located to the southwest of the project site on Owsley Avenue and approximately 200 feet from the residences behind the shopping center. While the residences located behind the shopping center are well-separated from the proposed restaurant by the shopping center building, there are no intervening buildings or walls that would mitigate the close proximity of the restaurant to the residential uses on Owsley Avenue. Based on this analysis, staff concludes that the proposed use is not consistent with the Policy’s use separation requirements.

Police Department Review

The Council Policy specifies that crime statistics and police safety issues that are related to uses operating between 12:00 midnight and 6:00 a.m. should be considered in determining the appropriateness of a 24-hour use and that the Police Chief should make a written recommendation regarding each proposal. As noted in the attached memorandum from the Police Department Vice Unit, the site is located in a Police Beat where crime was over the 20 percent crime index in both 2000 and 2001 and no significant change is expected in the 2002 data (which were as yet unavailable). The Police indicate that the site has had “moderate” policing problems with statistics indicating twenty-six (26) calls for service at the shopping center site (1020 McLaughlin Avenue) in a 20-month period (November 2001 through June 2003). These incidents included the following: disturbances, 911 calls, patrol check/welfare checks, assaults, theft, vandalism, man down and miscellaneous. The Police memorandum concludes that, although the restaurant is not a problem in itself, it should not be open past 12:00 midnight due to the significant criminal activity in the Police Beat, the very limited Police resources during the late night hours and the history of neighborhood concerns.

Conclusion

Based on the above analysis and most notably the Police Department’s recommendation, staff concludes that the proposed extended hours of operation are not in conformance with the Council Policy and are not compatible with the surrounding neighborhood.

RECOMMENDATIONS

Planning staff recommends that the Planning Commission deny the requested Conditional Use Permit and include the following facts and findings in its Resolution.

1. This site has a designation of Neighborhood/Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CP - Commercial Pedestrian Zoning District, which allows restaurant use as a permitted use and after midnight operations (24-hour use) subject to approval of a Conditional Use Permit.
3. The proposed use is consistent with the General Plan in that the proposed use is consistent with the Neighborhood/Community Commercial designation, the project is consistent with the existing pattern and character of the development along Story Road and the site has been and will be used in conformance with the zoning designation of the site.

4. The project was found to be exempt from environmental review under Section 15301 of the CEQA Guidelines, which exempts projects with existing facilities involving little or no expansion of an existing use. The project proposes no addition to the existing building, nor an increase in seating capacity.
5. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.
6. The project site is located in an approximately 4.5-acre neighborhood shopping center, bounded by Story Road to the north, McLaughlin Avenue to the east, and Clemence Avenue to the west. Access to the larger shopping center is provided by a driveway on McLaughlin Avenue, two driveways on Story Road, and a driveway on Clemence Avenue.
7. The project developer proposes the (after midnight) operating hours Friday, Saturday and Sunday from 12:00 midnight to 3:00 a.m.
8. The City Council has adopted a *Policy (6-27) – Evaluation of 24-Hour Uses*. That Policy contains General Guidelines that includes the following: area use compatibility, use separation, outdoor activities, police issues, noise, and mitigation management plan. The separation of uses is identified as an important guideline to minimize potential impacts on residential or other sensitive neighboring uses. The Policy states that 24-hour uses should generally not be located within 300 feet (measured from building entrance and designated parking area to residential property line).
9. Residential uses at the corner of Owsley and Clemence Avenues are the closest residential uses to the subject site. Residential uses are also located immediately behind the shopping center. These residential uses are located to the south and southwest (approximately 150 and 200 feet, respectively) of the subject site and are within 300 feet of the project's designated parking area and outdoor use area.
10. The Police Department, Vice Section has reviewed the requested Permit. The reported crime statistics are over the 20 % crime index as defined by B & P Section 23958.4 (c). A crime analysis by the Police Department, indicated a total of twenty-six (26) calls for service at the 1020 McLaughlin Avenue address in a 20-month period (from November 2001 through June 2003). The nature of these calls included the following: disturbances, false alarms, patrol check/welfare check, assaults, miscellaneous, 911 calls, vandalism, man down, and theft. The Police Department has recommended that the operation of this restaurant should cease by 12:00 midnight and does not support the request.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project will be consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. While the residences located behind the shopping center are well-separated from the proposed restaurant by the shopping center building, there are no intervening buildings or walls that would mitigate the close proximity of the restaurant to the residential uses on Owsley Avenue. The proposed use is not consistent with the use separation requirements of the City Council Policy *Evaluation of 24-Hour Uses*.
3. The project site is in an area that is significantly impacted with criminal activity.
4. The project will have any adverse effects on public health, safety or welfare and will be materially injurious to

adjacent properties or improvements.

5. The proposed project complies with all applicable provisions of the Zoning Ordinance.

6. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will

- a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; and will
- b. Impair the utility or value of property of other persons located in the vicinity of the site; and will
- c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:

- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
- b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above is hereby denied.

cc: Cesar Galindo, Tacos Autlense, 1020 Story Road, Suite D, San José, CA 95122

Jason Sowards, Managing Agent, Coates and Sowards Inc., 1725 South Bascom Avenue, Campbell CA 95008

Britta Buys/Patrice Shaffer, SNI Staff

Dave Kirkendall, San José Police Vice Unit